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Permanent Forum on Indigenous Issues

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Item 4 of the provisional agenda*

**Implementation of recommendations on the
six mandated areas of the Forum and on the
Millennium Development Goals**

Report of the international expert group meeting on the international regime on access and benefit-sharing and indigenous peoples' human rights of the Convention on Biological Diversity**

Summary

The present report provides an overview of the issues discussed at the international expert group meeting on the international regime on access and benefit-sharing and indigenous peoples' human rights of the Convention on Biological Diversity, held from 17 to 19 January 2007 at Headquarters in New York. Some of the issues examined included elements of customary law vested in traditional knowledge, indigenous peoples' participation in decision-making, human rights treaties, existing and other emerging instruments that are applicable to traditional knowledge, and the proposed certificate of origin, source or legal provenance for genetic resources.

* E/C.19/2007/1.

** The submission of the present report was delayed in order to ensure the inclusion of the most recent information.



I. Introduction

1. At its fifth session, the Permanent Forum on Indigenous Issues recommended that the Economic and Social Council authorize a three-day international expert group meeting on the international regime on access and benefit-sharing and indigenous peoples' human rights of the Convention on Biological Diversity. At its resumed session in December 2006, the Council decided to authorize the expert group meeting with the participation of representatives from the United Nations system, five members of the Permanent Forum, other interested intergovernmental organizations, experts from indigenous organizations and interested Member States. It also requested that the results of the meeting be reported to the Permanent Forum at its sixth session in May 2007.¹ The meeting was organized by the secretariat of the Permanent Forum and held from 17 to 19 January 2007 at Headquarters in New York (see annex I).

II. Organization of work

Attendance

2. The following Permanent Forum members attended the meeting: Victoria Tauli-Corpuz, Hassan Id Balkassm, Eduardo Almeida, Pashuram Tamang, Ida Nicolaisen and Merike Kokajev.

3. The following invited experts participated in the meeting: Clark Peteru (Pacific), Sem Shikonga (Africa), Mattias Ahren (Arctic), Yolanda Teran (Central and South America and the Caribbean), Erjen Khamaganova (Eastern Europe, Russian Federation, Central Asia and Transcaucasia), Joji Carino (Asia), Merle Alexander (North America).

4. The meeting was attended by observers from United Nations departments, agencies, funds and programmes, observers from other intergovernmental organizations, non-governmental organizations and Member States (see annex II).

Documentation

5. The participants had before them a draft programme of work and documents prepared by participating experts. The documentation is available on the website of the secretariat of the Permanent Forum (www.un.org/esa/socdev/unpfii/en/workshops.html).

Opening of the meeting

6. At the opening of the meeting, the Assistant Secretary-General for Economic Development, Jomo Sundaram, on behalf of the Under-Secretary-General for Economic and Social Affairs, made an opening statement.

¹ *Official Records of the Economic and Social Council, 2006, Supplement No. 23 (E/2006/43), chap. I.A, draft decision I.*

Election of officers

7. The Chairperson of the Permanent Forum, Victoria Tauli-Corpuz, was elected Chairperson of the meeting. John Scott of the secretariat of the Convention on Biological Diversity was elected rapporteur.

Adoption of conclusions and recommendations

8. On 19 January 2007, the participants in the meeting adopted, by consensus, the conclusions and recommendations contained in section III below.

Closure of the workshop

9. The meeting was closed after the conclusions and recommendations were adopted at the final plenary meeting, held on 19 January 2007.

III. Highlights of the discussion

10. In the discussions held during the course of the meeting, the participants examined various issues specific to indigenous peoples and the development of the international regime on access and benefit-sharing of the Convention on Biological Diversity. Some of the issues discussed included, but were not limited to, elements of customary law that are vested in traditional knowledge protection and transmission; an analysis of indigenous participation, including the levels and roles in decision-making; human rights treaties and other existing or emerging instruments that are applicable to traditional knowledge and genetic resources; options and opportunities in the proposed certificate of origin, source or legal provenance for genetic resources; and the role of customary law in the protection of traditional knowledge and development of regimes on access to genetic resources and benefit-sharing.

11. At the commencement of the meeting, the experts provided an overview of policies on the access and benefit-sharing provisions of the Convention on Biological Diversity, as well as examples of such arrangements at the national and local levels. The provisions include the Bonn Guidelines which were developed to assist Governments and stakeholders in establishing legislative, administrative or policy measures on access and benefit-sharing and in negotiating contractual arrangements.

12. The experts explained that the terms of reference for negotiating an international access and benefit-sharing framework within the Convention require a gap analysis, but remain open-ended as to whether there should be one or more instruments that could be legally binding or non-binding regarding access to genetic resources and the sharing of benefits. The terms include the consideration of possible elements of the regime, such as measures to facilitate access, measures to ensure compliance with free, prior and informed consent, mutually agreed terms and protection of traditional knowledge, and others.

Human rights

13. One expert pointed out that early human rights laws were influenced by theories of liberalism and the rights of the individual. The absence of provisions protecting the rights of collectivities are evident in, among others, the Universal

Declaration of Human Rights, adopted and proclaimed by the General Assembly in its resolution 217 (A) III of 10 December 1948, and Convention No. 107 of the International Labour Organization (ILO), which took an assimilationist approach and did not protect indigenous peoples as distinct ethnic entities. It was during the 1980s that a change occurred towards communitarianism, the result of a new approach taken by liberal States to ethnic groups and their issues, including indigenous peoples. The emergence of communitarianism, or what is now known as "multiculturalism", is mirrored in international law and evident in ILO Convention No. 169 and other covenants and conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights.

14. The draft declaration on the rights of indigenous peoples, adopted by the Human Rights Council in June 2006 and currently awaiting adoption by the General Assembly, confirms established international law. Several articles of the draft declaration highlight, in particular, the right of indigenous peoples to control, protect and develop their cultural heritage, including traditional knowledge, and the right to their lands and natural resources.

15. The recent changes in international human rights law may also be reflected in the right to self-determination in that it can be broadly interpreted to apply not only to the inhabitants of a State or territory but also to non-State forming peoples.² There is a long-held belief that the right to self-determination can also apply to indigenous peoples, who have the right to determine their models of development and the use of their lands and natural resources. However, the Convention on Biological Diversity only makes reference to State sovereign rights with regard to the exploitation of natural resources and the responsibility for determining access to genetic resources and associated traditional knowledge. It does not specify to what extent this sovereign right can extend to indigenous peoples who traditionally occupy the lands and resources within a State.

16. Regarding the development of an international regime on access and benefit-sharing, participants emphasized that such a regime, whether it be a legally or non-legally binding instrument, should conform to internationally recognized human rights laws, including indigenous peoples' collective rights. Furthermore, the concept of free, prior and informed consent should be included as an important part of an international regime on access and benefit-sharing, not only as a methodology, but also as a principle in addition to international human rights standards.

17. By virtue of their right to self-determination, indigenous peoples should be able to say whether or not they support an international regime on access and benefit-sharing; if they do support such a regime, they should have input in its development. Participants agreed that regardless of the form of the international regime or agreement within the Convention framework, it should guarantee the

² That the interpretation of international legal provisions evolves over time is fully consistent with international law. Pursuant to article 31 of the Vienna Convention on the Law of Treaties, subsequent practice constitutes the primary source when interpreting a provision contained in an international treaty; see United Nations, *Treaty Series*, vol. 1155, p. 331. Preparatory work before the adoption of a treaty — and States' position at that time — are merely secondary sources when interpreting the international instrument in question; they are relevant only to the extent that no subsequent practice exists that can guide the interpretation of a particular provision (see www.un.org/esa/socdev/unpfii/documents/workshop_CBDABS_mahren_en.doc).

protection of indigenous peoples' rights in accordance with international human rights standards. It was also stressed that the recognition of indigenous peoples' collective rights would be an important condition in terms of fulfilling their human rights as peoples.

Sovereignty

18. While the Convention framework clearly defines State sovereignty over the biological and genetic resources within national borders, indigenous experts expressed the view that an analysis of relevant international law and State practices, as well as the views expressed by indigenous peoples in various international forums, have confirmed indigenous peoples' right to own, use, control and manage their lands, territories and natural resources. These developments reflect the trend of greater recognition of indigenous peoples' right to maintain authority over their lands, territories and resources, as well as their decision-making powers, as set out in customary law practices, on the use and development of those resources. In addition, participants made reference to the study on the sovereignty of indigenous peoples over natural resources by the Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/2004/30), which provided an in-depth understanding of the sovereignty of indigenous peoples.

19. Participants provided examples of indigenous participation in negotiations on the use of natural resources, whether or not associated with traditional knowledge. In instances where indigenous peoples have not been able to participate in those negotiations as equal partners with outsiders, such as the State or the private sector, it has been extremely difficult to exercise their sovereign rights over natural resources. Hence, the recognition of the sovereignty of indigenous peoples over their resources can guarantee the establishment of genuine partnerships between indigenous peoples and others, particularly when negotiating issues that affect them as communities and as peoples.

20. It was also stated that the interpretation of sovereignty may vary from region to region; this also depends on how sovereignty is exercised in a given country. When democracy is lacking in the political process, indigenous peoples are absent from State policymaking processes; their rights over their lands, territories and natural resources are also undermined, which in turn affects the realization of their rights.

Participation

21. The participation of indigenous peoples in discussions concerning traditional knowledge has been enhanced by the Conference of the Parties, as is evidenced at meetings held under the Convention.

22. The experts emphasized that the current Convention processes hold many challenges for indigenous peoples because of lack of funding and information; documentation prepared by non-governmental organizations and the indigenous caucus is in fact not available in some languages (for example, Russian). In terms of participation, indigenous peoples are mainly relegated to article 8 (j) meetings and can only attend other meetings on the Convention as observers.

23. There is an expectation at some meetings held under the Convention that indigenous peoples will speak with one voice and have one specific position. Such a

situation is highly unlikely, considering the fact that indigenous peoples represent a diversity of regions and positions. Measuring indigenous peoples' participation in Convention processes is another challenge, because it does not necessarily reflect the number of indigenous participants and the search for one indigenous voice and one point of view. This issue was discussed at length with some participants, who agreed that it was important to speak with one voice, because having too many voices and positions can sometimes undermine the strength of negotiations.

24. At present there is no emphasis on regional groups and their perspectives in discussions on access and benefit-sharing. The same mistake is being made at the national level, where there might be opportunities for indigenous peoples to negotiate directly with States on national legislation and when developing regional positions.

25. There are currently few mechanisms that promote emphasis on gender, youth or elders, though there is a strong indigenous women's advocacy group in Convention processes. There are, however, some concerns in respect to involving indigenous youth and elders in the discussions in Convention processes, because discussions have become highly legalistic, political and scientific. Hence, there is a need for capacity-building to allow many of the traditional knowledge holders to become more involved in negotiation processes.

26. Unfortunately, there has been a lack of empowerment at both the national and international levels for youth and elders to participate in Convention processes. There is however, an important role for indigenous youth to play at the local level, working closely with elders in collecting, protecting and maintaining traditional knowledge. These activities are important in bridging the gap between youth and elders. The recording and presentation of case studies may be another way of representing the voices of youth and elders.

Customary law

27. One expert provided a brief overview of customary laws relating to the preservation, transmission, maintenance and development of traditional knowledge. These include the local systems of laws, norms, taboos and regulations that have been devised to keep social order and maintain continuity of cultural practices.

28. Traditional knowledge can exist only in a particular place in a particular community, related to particular circumstances of the environment and livelihoods. Therefore, issues of preservation, maintenance and development of traditional knowledge are relevant to human rights, including rights to land and the right to self-determination. Although traditional knowledge is, by definition, often local and even place-specific, it has now become a global issue. This fact is reflected in the attitudes of indigenous communities, which are not uniform and reflect various competing and often conflicting values. Under such conditions, it is very difficult to reach a shared understanding of traditional knowledge, the degree of its salience and the dangers and benefits of it becoming uniform, standardized and commercialized. Unless there is a common understanding and reconciliation of conflicting values, the disappearance of the indigenous traditional knowledge, on which the identity, cultural and physical survival of many indigenous communities around the world depend, may be inevitable.

29. One way of reaching a shared understanding of the concepts of traditional knowledge is for States and other stakeholders to accept and respect the traditional customary laws and practices of indigenous peoples. Traditional knowledge includes a system of locally devised rules, norms, taboos and regulations, which are the means to keep social order and maintain continuity over time, and are consistent with the values of society. Hence, customary law is a key qualifier of traditional knowledge and needs to be understood.

30. The underlying philosophical principles of customary law cannot be ignored. They include the principles of reciprocity; of restoring harmony and balance; of peaceful conflict resolution; and of flexibility and adaptability to the dynamics of the environment.

31. Indigenous peoples and communities possess concrete rules and practices regarding access to and protection of their traditional knowledge and resources. In some instances, indigenous peoples do not hide their knowledge and genetic resources from others, because in many cases the benefit of their use is obvious. However, a fundamental requirement must be met, namely the requirement of recognition of and guarantees for the continuation of traditional principles of norms, customary law and the pedagogical methods of access to and transfer of that knowledge.

Certificates of origin

32. Participants pointed out that the main objective of an internationally recognized system of certificate of origin, source or legal provenance is to ensure the traceability of genetic resources from the collection phase through to the marketing of a resulting product. Such a tool could help to ensure compliance with access and benefit-sharing provisions of the Convention and provide assurance that requirements related to the legal acquisition of the genetic resources in the country of origin or provider country have been met.

33. The aim of such a certificate would be twofold: to assist providers in ensuring that the resources are used in conformity with their national access requirements; and to provide legal certainty and predictability for users of genetic resources who have obtained a certificate through competent national authorities or those who have acquired the genetic resources from an earlier receiver. The system would therefore contribute to building trust and fostering cooperation among users and providers of genetic resources.

34. In order to protect the rights of indigenous peoples, the proposed certificate of origin, source or legal provenance covers two types of genetic resources: genetic resources without associated traditional knowledge; and genetic resources and associated traditional knowledge. There is concern that the separation between genetic resources and associated traditional knowledge will break the essential link between the physical resource and the intangible resource, and potentially exclude traditional knowledge from the certificate. Hence, the appropriate references should clearly state "genetic resources" and "genetic resources and associated traditional knowledge".

35. Traditional knowledge also embodies property rights and cultural rights of indigenous peoples and adds value to genetic resources; therefore, indigenous peoples and their communities who are the rights-holders over genetic resources and

associated traditional knowledge need to be identified, in order to share in the benefits arising from its utilization. With regard to claims that it is difficult to identify the appropriate indigenous communities and traditional knowledge associated with genetic resources, the local/subnational geographical areas from which the genetic resource has been derived must be identified in the proposed certificate of origin, source or legal provenance.

36. The elaboration and adoption of community protocols and codes of conduct regarding research, bioprospecting and other uses of traditional knowledge would result in greater understanding of access and benefit-sharing issues for indigenous peoples, and would also facilitate the operational implementation of an international regime on access and benefit-sharing, including an internationally recognized certificate of origin, source or legal provenance.

37. National legislation addressing *sui generis* protection of traditional knowledge, innovation and practices would also help in ensuring compliance with national legislation and an international access and benefit-sharing regime.

IV. Conclusions and recommendations

38. Participants in the expert group meeting concluded that international human rights law affirms indigenous peoples' human rights, including cultural rights and rights to lands, waters, territories and natural resources, genetic resources and traditional knowledge. They also concluded that an international regime on access and benefit-sharing developed within the framework of the Convention must not be in violation of those rights. Consequently, the parties to the Convention are legally obliged to guarantee that any international regime recognizes and respects those rights.

39. It was also concluded that, while States hold sovereign rights to natural resources within their borders, those rights are relevant only in relations between the State and external legal subjects, such as other States and foreign corporations. Hence, the principle of State sovereignty offers no guidance as to the relationship of a State vis-à-vis peoples and individuals residing within its borders with regard to rights to genetic resources and associated traditional knowledge. It was concluded that peoples hold sovereign rights to natural resources within their territories; the parties to the Convention are bound to respect those rights, despite language on State sovereignty and references to domestic legislation contained in the Convention.

40. Participants in the meeting provided many examples of the issues that arise in negotiating access and benefit-sharing arrangements at the national and local levels, and concluded that the lack of adequate resources for indigenous peoples to engage in effective participation in the international access and benefit-sharing process was an obstacle to effective outcomes for indigenous peoples. It was also noted that developing such arrangements at the national and local levels also presents its own set of issues, such as States asserting ownership of genetic resources on indigenous lands and territories. In addition, indigenous peoples often lack the technical skills to negotiate access and benefit-sharing arrangements with outside interests.

41. At the meeting, it was concluded that access and benefit-sharing arrangements were particularly complex in situations characterized by a diversity of indigenous

peoples' voices and in which different indigenous groups use the same genetic resource in a variety of ways. There were also discussions on transboundary issues, which may result in bioprospecting companies exploiting certain groups to obtain the arrangements that best suit their needs, including those indigenous groups in countries that do not have access and benefit-sharing arrangements in place.

42. Participants in the meeting emphasized the need to further enhance indigenous peoples' rights to participate in Convention meetings. Thematic enhancements for indigenous peoples' participation included involvement in the development of national access and benefit-sharing legislation and the development of regional and national positions concerning an international regime on access and benefit-sharing; improved facilitation of coordination between the Working Group on article 8 (j) and the Working Group on Access and Benefit-sharing; establishment of an indigenous expert group as a mechanism of coordination between the two groups; and improved participation of indigenous peoples from the seven geocultural regions defined by the Permanent Forum.

43. It was emphasized that principles of customary law include reciprocity, restoring harmony and balance, and conflict resolution. It was concluded that obstacles to indigenous peoples' participation in the development of national laws on access and benefit-sharing often arise when existing customary laws, norms and cultural practices of indigenous peoples and communities are overlooked. Indigenous peoples are also excluded because they often lack experience and information in dealing with outside interests and are unable to articulate their positions in non-indigenous languages.

44. It was emphasized that indigenous peoples' principles of customary legal systems relevant to genetic resources and traditional knowledge constitute *sui generis* systems for managing such resources and knowledge. It was furthermore noted that indigenous peoples hold collective rights to genetic resources and associated traditional knowledge, and that those rights have to be managed in accordance with the relevant peoples' legal customs. It was concluded that the parties to the Convention must respect indigenous peoples' customary legal systems in their deliberations, including in the elaboration of an international regime on access and benefit-sharing.

45. Participants in the meeting discussed the proposed certificate of origin, source or legal provenance and concluded that the integral link between genetic resources and associated knowledge must be maintained in the certificate in order to protect the rights of indigenous peoples and to ensure their share in any benefits arising from the utilization of genetic resources and associated traditional knowledge. It was emphasized that indigenous peoples' free, prior and informed consent must be upheld in national, regional and international instruments on access and benefit-sharing.

46. At the meeting, it was concluded that traditional knowledge enhances the value of biological and genetic resources that have been nurtured and transmitted by indigenous peoples for thousands of years. The value added by traditional knowledge should be fully acknowledged in the development of a certificate of origin, source or legal provenance, as well as in arrangements concerning access to genetic resources and associated traditional knowledge, in research and development, patent applications and commercial development. Community-controlled registers of biological resources and associated traditional knowledge and

community protocols on access and benefit-sharing could be important tools to complement such a certificate.

A. General recommendations

47. The experts participating in the meeting:

(a) Emphasized the need to recognize, respect and protect indigenous peoples' cultural rights and their right to participate in all matters that affect them, and urged parties to recognize indigenous rights to lands, waters, territories and natural resources, including genetic resources, as well as associated traditional knowledge and custodianship over biodiversity.

(b) Urged the General Assembly to adopt the draft declaration on the rights of indigenous peoples, as soon as possible and no later than the sixty-first session, as a basis for indigenous peoples' rights in the negotiations on an international regime on access and benefit-sharing.

(c) Recognizing that the right of self-determination applies to all peoples, called on parties to respect the free, prior and informed consent of indigenous peoples regarding access to genetic resources and associated traditional knowledge originating in the lands, waters and territories of indigenous peoples.

(d) Urged parties in their elaboration and negotiation of an international regime on access and benefit-sharing to recognize, respect and protect the rights of indigenous peoples in all aspects of the regime, and take into account and complement the work of other organizations, such as the work of the World Intellectual Property Organization (WIPO) in relation to the intellectual property aspects of access and benefit-sharing and the protection of traditional knowledge.

(e) Recognized that 2010 had been declared the International Year of Biodiversity and that indigenous peoples, as the custodians of the Earth's biodiversity, should be major players in actions planned for 2010, and in that spirit called for close cooperation between the Convention on Biological Diversity and the Permanent Forum on Indigenous Issues to promote the International Year of Biodiversity and highlight the role of indigenous peoples as custodians of biodiversity.

(f) While recognizing that States hold sovereign rights to natural resources within their borders, underlined that that right was relevant only in relations between the State and external legal subjects, such as other States and foreign corporations; hence, it noted that the principle of State sovereignty offered no guidance as to the relationship of a State vis-à-vis peoples and individuals residing within its borders with regard to rights to genetic resources and traditional knowledge. It also recalled that peoples too hold sovereign rights to natural resources within their territories.

(g) Noting that community-based natural resource management supports all three objectives of the Convention and furthers the parties' obligations under article 8 (j) and 10 (c) and is the most effective form of environmental protection, urged parties to recognize the role of Government in coordinating local natural resource management and conservation at the national level with the full and effective

participation of indigenous peoples. Furthermore, that principle should also apply to access and benefit-sharing arrangements.

(h) Recognized that in situ conservation, including access and benefit-sharing arrangements, when implemented at the community level, would provide an opportunity for indigenous peoples to choose whether or not to commercialize their traditional knowledge and genetic resources.

(i) Welcomed the openness of meetings held under the Convention, including the notification process which allows for the submission of views and documentation to the secretariat of the Convention so that they are taken into account in the preparation of meeting documents, as useful mechanisms to assist effective participation of indigenous peoples.

(j) Invited the Permanent Forum to transmit the report of the expert group meeting to the Executive Secretary of the Convention on Biological Diversity as an information document for the meetings of the open-ended Working Group on Access and Benefit-sharing and the open-ended Working Group on Article 8 (j) and Related Provisions, to be presented during the discussion of the relevant agenda item at those meetings.

(k) Invited the secretariat of the Permanent Forum, in cooperation with the secretariat of the Convention, to organize a side-event on the occasion of the fifth meeting of the open-ended Working Group on Access and Benefit-sharing of the Convention, as an occasion for the co-Chairs of the Working Group, representatives of States parties and other interested groups to consider the conclusions and recommendations of the expert group meeting and the views of indigenous peoples on an international regime on access and benefit-sharing.

(l) Invited the Permanent Forum to discuss the report of the expert workshop at its sixth session in May 2007, and to make appropriate recommendations to Governments, international and regional organizations and indigenous peoples based on the conclusions of the meeting.

(m) Invited indigenous peoples to compile case studies about local and national experiences relevant to the proposed international regime on access and benefit-sharing and sui generis protection of traditional knowledge, and to make them available to the Executive Secretary of the Convention for inclusion in the documentation for the Working Group on Access and Benefit-sharing.

(n) Recommended the development of regional approaches with the full and effective participation of indigenous peoples to address transboundary issues associated with access and benefit-sharing of genetic resources, the protection of traditional knowledge and the development of an international regime.

(o) Invited the Permanent Forum to prepare a legal analysis on States, peoples and sovereignty and their relationship, scope and application, to assist the parties to the Convention in understanding sovereignty in the context of the Convention and the role of sovereignty in developing an international regime of access and benefit-sharing.

(p) Invited the Permanent Forum to cooperate with the Executive Secretary of the Convention and the United Nations Educational, Scientific and Cultural Organization (UNESCO) to explore synergies concerning the protection of traditional knowledge, in the light of the UNESCO Convention for the Safeguarding

of the Intangible Cultural Heritage (2003) and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

(q) Urged parties to ensure that protection, including the *sui generis* protection of traditional knowledge, was provided in parallel with the completion and adoption of an international regime on access and benefit-sharing of genetic resources.

(r) Urged parties to recognize customary laws of indigenous peoples relevant to genetic resources and traditional knowledge and to consider the development of *sui generis* systems based on such customary laws, as appropriate, for the protection of traditional knowledge and access and benefit-sharing of genetic resources and associated traditional knowledge.

(s) Urged parties and all stakeholders to fully consider the rights and interests of indigenous peoples living in voluntary isolation and indigenous peoples with small and vulnerable populations regarding the recognition, respect and protection of their traditional knowledge and the development of an international regime on access and benefit-sharing.

(t) Urged parties to consider the limitations of the Convention regarding the high seas and genetic resources, which fall outside the scope of the Convention, and the difficulties that could arise in developing an international regime on access and benefit-sharing of transboundary genetic resources, which may fall both within national jurisdictions and in areas beyond national jurisdiction including on the high seas and the deep seabed.

B. Specific recommendations

Effective participation

48. The expert group furthermore:

(a) Urged indigenous peoples to be active at the national level in developing national legislation on access and benefit-sharing and other *sui generis* systems for the protection of traditional knowledge and genetic resources.

(b) Urged the parties and other Governments to include indigenous peoples in negotiating regional positions in the context of the development of an international regime on access and benefit-sharing.

(c) In order to strengthen regional approaches and coordination on an access and benefit-sharing regime, urged indigenous peoples and Governments in Asia to maximize exchanges of information and dialogue during the planned workshop on biodiversity organized by the United Nations Development Programme Regional Initiative on Strengthening Policy Dialogue on Indigenous, Highland and Tribal Peoples' Rights and Development. Similar events should be held in other regions.

(d) Encouraged indigenous peoples' organizations, including the International Indigenous Forum on Biodiversity, to establish an informal, open-ended indigenous expert group on access and benefit-sharing and article 8 (j) prior to the fifth meeting of the Working Group on Access and Benefit-sharing, to analyse, review and provide input directly to the processes of the Working Group on Article 8 (j) and the Working Group on Access and Benefit-sharing, and to provide

advice directly to the Working Group on Access and Benefit-sharing as a useful mechanism to increase cooperation and coordination between the two working groups. In particular, the Group on Access and Benefit-sharing should analyse developments in the elaboration and negotiation of an international regime on access and benefit-sharing throughout all relevant processes, namely the Working Group on Access and Benefit-sharing, the Working Group on Article 8 (j), the Conference of the Parties and any other specialized subsidiary groups.

(e) Recommended that parties support the work of the indigenous expert group with adequate resources to, among other tasks, critically analyse the nature, scope, objectives and possible elements of an international regime on access and benefit-sharing, and provide direct advice to the Working Group on Access and Benefit-sharing.

(f) Recommended that parties continue to enhance participatory mechanisms by ensuring that diverse regional views of indigenous peoples were reflected in discussions. In particular, the parties were urged to ensure adequate representation of indigenous peoples from the seven geocultural regions and subregional levels in the Working Group on Access and Benefit-sharing and that they are provided with opportunities to express diverse regional and subregional views.

(g) Noting the progress made in establishing the Traditional Knowledge Information Portal, urged the Executive Secretary to fully operationalize the Portal to further facilitate effective participation of indigenous peoples through the provision of electronic communication mechanisms.

Coordination

(h) Recommended that the notification process of the Convention on Biological Diversity encourage indigenous peoples and other interested bodies to provide information that could assist the Executive Secretary in completing a gap analysis to include potential disparities between the Convention, regional trade agreements, the World Trade Organization, the Trade-Related Intellectual Property System and the International Union for the Protection of New Varieties of Plants, in a timely fashion, fully taking into account indigenous views and a comprehensive understanding of existing human rights arrangements, and to transmit the results to the fifth meeting of the Working Group on Access and Benefit-sharing.

(i) Recommended that technical reviews be conducted at critical stages in the negotiation and development of an international regime on access and benefit-sharing by relevant United Nations agencies and other specialist bodies, such as the Permanent Forum on Indigenous Issues, WIPO, the Office of the United Nations High Commissioner for Human Rights, the World Bank and the Food and Agriculture Organization of the United Nations, and through such mechanisms as the Inter-Agency Support Group for the Permanent Forum on Indigenous Issues, to ensure that negotiated instruments are in harmony with existing and developing international legal instruments, standards and arrangements and, in particular, take into account the rights already ensured by existing human rights law and instruments.

(j) Urged the Convention, in line with United Nations reform measures, to apply the human rights approach to development, including in the development of an international regime on access and benefit-sharing.

(k) Invited the Convention, the Permanent Forum, the Inter-Agency Support Group and appropriate agencies to cooperate to support indigenous networks and disseminate information, in appropriate and accessible languages, and through appropriate media, to indigenous communities to build capacity and awareness of Convention-related matters.

Capacity-building

(l) Urged the secretariat of the Permanent Forum to cooperate with the Convention secretariat to develop the Traditional Knowledge Information Portal, which will include a database of indigenous experts who could assist indigenous peoples in capacity-building concerning the environment, the Convention and in specific areas, such as the protection of traditional knowledge and access and benefit-sharing of genetic resources and associated traditional knowledge.

(m) Requested the Executive Secretary to increase capacity-building opportunities for indigenous peoples, recognizing the role of elders, women and youth in traditional knowledge transmission, and to provide capacity-building opportunities that include skills needed in negotiating with outside interests.

(n) Encouraged the secretariat of the Convention to work in partnership with the secretariat of the Permanent Forum to organize regional workshops for the purposes of information exchange and capacity-building among governments, indigenous and local communities and other stakeholders with regard to access and benefit-sharing of genetic resources and the proposed international regime on access and benefit-sharing.

(o) Recommended that indigenous organizations use the documents from the expert group meeting and other relevant meetings to produce concise briefing notes on various elements of the proposed international regime on access and benefit-sharing to inform all participants of the meetings of the open-ended Working Groups on Access and Benefit-sharing and Article 8 (j) and Related Provisions.

Other issues

(p) Recalling decision 16 of the Conference of the Parties at its fifth session on tasks of the second phase of the programme of work for the implementation of article 8 (j),³ instructing "the ad hoc Working Group to develop guidelines that would facilitate repatriation of information, including cultural property, in accordance with article 17, paragraph 2, of the Convention on Biological Diversity, in order to facilitate the recovery of traditional knowledge of biological diversity", recommended that those guidelines apply a broad interpretation of repatriation to include biological and genetic resources, all of which are integral to the cultural heritage of indigenous peoples.

(q) Welcomed the establishment of the voluntary fund for indigenous and local community participation in meetings held under the Convention and urged donors to provide funds to the newly established voluntary fund, targeted at the participation of indigenous and local communities in access and benefit-sharing processes.

³ See www.biodiv.org/decisions, decision V/16, Programme of work on the implementation of article 8 (j) and related provisions of the Convention on Biological Diversity, sect. III, element 3, task 15.

Annex I

Programme of work

Wednesday, 17 January

10-10.30 a.m.

Opening of the workshop by the Assistant Secretary-General for Economic Development, Mr. Kwame Sundaram Jomo

Item 1 Election of Chairperson and Rapporteur

Item 2 Adoption of agenda and organization of work

10.30 a.m.-1 p.m.

Item 3 International standards and policies on agreement-making with reference to indigenous peoples

- Analysis of international standards and recommendations concerning the rights of indigenous peoples (Convention on Biological Diversity, Human Rights Committee, Commission on Human Rights, Permanent Forum on Indigenous Issues, the International Labour Organization and others) relevant to the development of an international regime on access and benefit-sharing
- Analysis of private sector companies and donor policies on access and benefit-sharing arrangements, with special reference to indigenous peoples
- Analysis of how the goals and needs of indigenous peoples in access and benefit-sharing arrangements differ from the needs and goals of other interested holders, especially in the Convention on Biological Diversity processes

Opening presentations

Mr. John Scott

Mr. Sem Shikonga

3-6 p.m.

Item 4 Areas in which indigenous peoples' participation is relevant to any access and benefit-sharing arrangements

- Analysis of mechanisms for representation and effective participation with regard to gender, youth, elders and other knowledge holders
- Analysis of indigenous peoples' perspectives with regard to targets and indicators used in access and benefit-sharing processes, as well as budgetary concerns that affect indigenous peoples' participation
- Analysis of effective participation of indigenous peoples in implementing, monitoring and evaluating access and benefit-

sharing plans, with particular reference to Convention processes

- Suggestions on how to bridge the gap between the theories of access and benefit-sharing arrangements and actual tools and practices needed to strengthen or build the effective participation of indigenous peoples in the negotiation processes of the Convention

Presentations

Mr. Merle Alexander

Mr. Mattias Ahren

Thursday, 18 January

10 a.m.-1 p.m.

Item 5 Factors that enable or obstruct indigenous peoples' participation in the Convention processes

- Effective participation in decision-making at the national level
- Public access to information on access and benefit-sharing agreement-making
- Accountability and integrity in decision-making and implementation of policies at the international and national levels in regard to Convention process
- Access to the legal and judicial systems to formulate and negotiate access and benefit-sharing arrangements
- Obstacles, including lack of relevant statistics, lack of information and lack of understanding of technical and legal language of access and benefit-sharing arrangements
- The role of the private sector in policy, legislation reforms and in defining access and benefit-sharing regimes and how this affects indigenous peoples
- Focus on the persistent barriers that block indigenous peoples' effective participation in the Convention process
- The role of the donor community and the private sector in enhancing or weakening indigenous peoples' participation in the Convention process

Presentations

Ms. Erjen Khamaganova

Ms. Yolanda Teran

3-6 p.m.

Item 6

Good examples of indigenous participation in negotiating access and benefit-sharing processes in other arenas

- Within the United Nations system and other intergovernmental organizations
- Highlight and provide case studies of partnerships that currently exist between Governments, private sector companies, donor agencies and indigenous peoples in national, regional or local access and benefit-sharing agreements
- Provide examples of the impact of equal participation of indigenous women, men, youth, elders and other knowledge holders in the access and benefit-sharing processes in achieving the goal of sustainable development

Presentations

Mr. Clark Peteru

Ms. Joji Carino

Mr. Benoit Gauthier on behalf of the Government of Canada

Friday, 19 January

10 a.m.-1 p.m.

Item 7

Strategies to identify gaps and challenges and a possible way forward

3-6 p.m.

Item 8

Conclusions and recommendations

Annex II

List of participants

Members of the Forum

Ms. Victoria Tauli-Corpuz
Mr. Hassan Id Balkassm
Mr. Eduardo Almeida
Mr. Pashuram Tamang
Ms. Ida Nicolaisen
Ms. Merike Kokajev

Invited experts

Mr. Clark Peteru (Pacific)
Mr. Sem Shikonga (Africa)
Mr. Mattias Ahren (Arctic)
Ms. Yolanda Teran (Latin America and the Caribbean)
Ms. Erjen Khamaganova (Russian Federation, Central Asia and Transcaucasia)
Ms. Joji Carino (Asia)
Mr. Merle Alexander (North America)

United Nations system

Secretariat of the Convention on Biological Diversity
Economic and Social Commission for Asia and the Pacific
United Nations Environment Programme
United Nations Educational, Scientific and Cultural Organization
World Intellectual Property Organization
World Bank

Other intergovernmental organizations

International Organization for Migration
African Union
Delegation of the European Commission to the United Nations in New York

Non-governmental organizations

FAIRA Aboriginal Corporation, Australia
Indigenous Peoples Council on Biocolonialism
Call of the Earth Llamado de la Tierra
Federación Interprovincial de los Centros Shuar, Ecuador
Indigenous World Association
Association of the Indigenous Peoples of the Far North, Siberia and Far East of the Russian Federation (RAIPON)
ALMACIGA Grupo de Trabajo Intercultural, Spain
Netherlands Centre for Indigenous Peoples
Tribal Link Foundation, New York
International Union for the Conservation of Nature
Universiteit Leiden, Netherlands
International Working Group for Indigenous Affairs

Countries

Brazil
Bolivia
Canada
Colombia
France
Guatemala
Indonesia
Japan
Mexico
Panama
Papua New Guinea
Russian Federation
Spain
United States of America
Venezuela (Bolivarian Republic of)
